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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re NATHAN M. et al, Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

CANDACE M.,

Defendant and Appellant.

B241066

(Los Angeles County
Super. Ct. No. CK59175)

APPEAL from an order of the Superior Court of Los Angeles County,
Veronica V. McBeth, Judge. Reversed in part and affirmed in part.

Kate M. Chandler for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Denise M. Hippach, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Candace M. (Mother) appeals from a dispositional order, seeking review of jurisdictional findings as to her children Hannah M., C.M., Isaiah M., and Nathan M. pursuant to Welfare and Institutions Code section 300, subdivisions (b), (d), and (j).¹ We determine that substantial evidence supports jurisdictional findings made pursuant to section 300, subdivisions (b) and (d) as to Hannah, C.M., and Isaiah, but must be reversed as to Nathan. We further determine that substantial evidence supports jurisdictional findings made pursuant to section 300, subdivision (j) as to Hannah, C.M., Isaiah, and Nathan, and affirm those jurisdictional findings.

FACTUAL AND PROCEDURAL HISTORY

Detention and Section 300 Petition for Hannah: On March 15, 2011, the DCFS received a referral that Hannah, 13 years old, had been sexually abused by her 15-year old adopted sibling Ezra M. (Eddie or Ezra). Hannah said it happened twice. Two Saturdays previously at about 1:00 a.m. Eddie raped her in the room she shared with Veronica, who was at her boyfriend's house. Hannah said Mother was probably sleeping. Hannah stated that she woke up and Eddie was there. She said Eddie was behind her, touched her under her clothes "and below," took off her clothes, and "inserted himself in my behind." She said that he started moving in her for about 45 minutes, which hurt. She cried, and Eddie went into the hallway bathroom. She went to sleep.

The next time it happened was on a Saturday or Sunday at about 9:00. Her younger sisters were in their room and Mother was in her room. Hannah said she was on her side in the bed, heard someone enter the room, take off his clothes and get in bed with her, pull her pajamas down slightly and insert himself in her back. Hannah stated that this lasted 20 to 30 minutes.

¹ Unless otherwise specified, statutes in this opinion will refer to the Welfare and Institutions Code.

Hannah told her friends Page S. and Julie C., who told some adults. Hannah also told Krista D., an adult at her after-school program, what happened. Krista D. stated that Mother alleged that Hannah was a liar, that she stole and cursed, and was diagnosed with depression and needed psychiatric help. Krista D. stated that Hannah was shy, did not use foul language, and participated in school activities and was well behaved, and that Mother's opinion and observation of Hannah was 100 percent different from what teachers and administrators knew of Hannah. Krista D. also reported that Hannah hated Mother and hated living in her house, and had poor hygiene and had stated that she wet her bed at night. Her feet smelled, her shoes were worn down, she wore PE clothes a lot and wore the same clothes for three days.

Hannah said she did not tell Mother about the incidents because Mother would not believe her. Hannah said Mother considered Eddie a "goodie goodie" who never did anything wrong and treated Eddie better than the others. Hannah said she and Mother never got along and Mother treated her differently than the other children.

Mother stated that Hannah was belligerent, practiced poor hygiene, and had stolen from teachers. During the seven years she was with Mother, Hannah had been under the care of the Department of Mental Health.

Fifteen-year-old sibling Nathan stated that he was the biological brother of Hannah and C.M., and he liked living in Mother's home. He said that Eddie was like a real brother and that he was closest to Eddie, and denied any arguments or disagreements. He said Eddie did not talk to Hannah and did not acknowledge her. Nathan stated that he felt Hannah was honest and did not lie as much as Mother believed, but he was not sure whether Hannah was telling the truth about her allegations against Eddie.

Eddie, also age 15, said Mother adopted him when he was two years old. He said he got along well with Mother, Nathan, and Veronica, talked a little with C.M., and that he got along with Hannah and would talk to her if she talked to him. Eddie called the allegations against him "absurd" and did not know why Hannah made them. He said he was home on the nights of the allegations, but slept on the couch all night.

On May 24, 2011, the DCFS filed a non-detained section 300 petition on behalf of Hannah. It alleged that the child was a person described by section 300, subdivision (b) [child suffered, or risked suffering, serious physical harm or illness as a result of parent's failure or inability to supervise or protect her and as a result of parent's willful or negligent failure to supervise or protect her]. It alleged that the child was a person described by section 300, subdivision (d) [child had been sexually abused, or there was risk child would be sexually abused by member of child's household, and parent failed to protect the child adequately from sexual abuse and parent knew or reasonably should have known the child was in danger of sexual abuse]. It alleged that Hannah was a person described by section 300, subdivision (j) [child's sibling was abused or neglected as defined in subdivision (a) and (b) and there was substantial risk the child would be abused or neglected as defined in those subsections].

Detention and Section 300 Petition for Nathan, C.M., and Isaiah: On April 25, 2011, a CSW received a referral alleging sexual abuse of C.M., 11 years old, by Eddie. C.M. had disclosed to children at school that she was raped several times. C.M. at first denied being sexually abused by Eddie, but during a later interview with Mother and other children at home, her older adopted sibling Ruthie Veronica R. (Veronica) stated that C.M. told her that day that Eddie had raped her several times in the past. The CSW questioned C.M., who revealed that Eddie had raped her about 10 times, stating that he came into her room at night, lay in her bed, and "put his thing inside of her." C.M. stated that Eddie started by touching her legs and then penetrated her privates with his penis. C.M. said the last rape had occurred five days earlier and Mother was not aware of this. C.M. said she had not reported these incidents because she was afraid. C.M. said that her 6-year-old sibling, Destiny M., was sleeping in the same room when this happened. Destiny denied that Eddie touched her inappropriately or molested her, and said she had not seen Eddie in her room at night.

Sibling Nathan M. denied experiencing any abuse, did not understand the allegations, and could not believe Eddie could do that to C.M. Sibling Isaiah, 8 years old, denied sexual abuse by anyone and denied knowledge of sexual abuse in the home.

Sibling Veronica stated she was very scared for C.M. and Destiny. Veronica said C.M. told her that Eddie sexually abused her and there was actual penetration. Veronica advised C.M. to tell the truth, because Eddie previously sexually molested Veronica, sneaking into her bedroom at night thinking she was sleeping and rubbing her leg. Veronica said she once caught Eddie lying on the floor close to her bed, and that Eddie sent her inappropriate text messages and often peeped through the door into her bedroom. She said she had reported “the little things” Eddie did to Mother, but not the touching, and said Mother would not believe her statements. She stated that Mother thought Eddie was the best child and favored him over other children in the home.

Eddie denied doing anything inappropriate to C.M. Eddie said he accidentally sent a text to Veronica, who misinterpreted it. Eddie could not remember the message, but denied it had any sexual implications, and said that Veronica would lie about him going into her room.

Mother denied sexual abuse of C.M. by Eddie, whom she called a good boy. Mother stated that this stemmed from Hannah’s issues and that C.M. had never disclosed anything to her or the other children. Mother said she did not understand the allegation because she watched the children closely and walked through the house at night to check on the children. When informed that Veronica had caught Eddie lying on the floor in her room at night a few times, Mother said Eddie was the best child in the house, she never had any problems with him, and she found it hard to believe the allegations against him. Mother said that no one had told her anything about allegations of abuse by Eddie. Mother said that Veronica was a liar and had shown sexual inappropriateness toward others in the past. Mother also stated that Hannah was removed from the home because she had mental health challenges and serious behavioral problems Mother could no longer handle. According to Mother, Hannah made up stories and lied a lot.

Personnel from C.M.’s school and C.M.’s teacher stated that C.M. was a good student, behaved well, and did not demonstrate any behavior suggestive of a sexually abused child.

The psychiatrist for C.M., Nathan, and Veronica stated that Veronica was manipulative and could have manipulated C.M. into being an ally. The psychiatrist had never met Eddie, but recalled a similar allegation involving Hannah, who was his patient at the time. Although Mother followed up with appointments, the psychiatrist stated that there were too many children for Mother to deal with.

Wendy R. was partners with Mother for 13 years; they separated three years earlier. Wendy R. was co-mother to Isaiah M.

On May 9, 2011, the DCFS filed a non-detained section 300 petition on behalf of Nathan, C.M., and Isaiah. It alleged that the children were persons described by section 300, subdivision (b) [child had suffered, or risked suffering, serious physical harm or illness as a result of parent's failure or inability to supervise or protect them and as a result of parent's willful or negligent failure to supervise or protect them]. It alleged that the children were persons described by section 300, subdivision (d) [child had been sexually abused, or there was risk child would be sexually abused by member of child's household, and parent failed to protect the child adequately from sexual abuse and parent knew or reasonably should have known the child was in danger of sexual abuse]. It alleged that Nathan and Isaiah were persons described by section 300, subdivision (j) [child's sibling was abused or neglected as defined in subdivision (a) and (b) and there was substantial risk the child would be abused or neglected as defined in those subsections].

On May 9, 2011, the juvenile court found that a prima facie case for detaining Nathan and Isaiah as persons described by section 300, subdivisions (b), (d), and (j) was established, and that a prima facie case for detaining C.M. as a person described by section 300, subdivisions (b) and (d) was established and ordered these three children released to Mother. On May 24, 2011, the juvenile court found that a prima facie case for detaining Hannah as a person described by section 300, subdivisions (b), (d), and (j) was established and ordered Hannah released to Mother. Hannah remained a resident of the group home where Mother voluntarily placed her on March 17, 2011.

Jurisdiction and Disposition: C.M. was again interviewed about whether she was sexually abused and by whom. C.M. stated that something sexual happened beginning in March 2011 through April 21, 2011. C.M. said Eddie came into her room between 11:00 p.m. and 2:00 a.m. when everyone was sleeping. Eddie woke C.M. by touching her vagina underneath her shorts. C.M. said this happened about 10 times. C.M. stated that Eddie squeezed her so their privates touched. She tried to scream but she was scared and nothing came out. C.M. stated that Eddie “never put his private inside me, but he would try. I would squeeze my legs together really tight and he could not go in. He would rub his private against the inside of my leg.” C.M. said Eddie never threatened her. C.M. said she never told him to stop coming to her room, saying she was really scared and never talked to him. She said she did not tell Mother because she got scared and thought Mother would put her in a group home as Mother had done with Hannah.

Nathan said that because C.M.e and Veronica had stated that Eddie did something sexual to them, he was suspicious of Hannah’s similar allegations a year earlier. Although he did not suspect C.M. of lying and knew her to be reliable, he said C.M. had “bad days” and was “easily persuaded.” Nathan said he had a close relationship with Eddie and did not believe he was “that kind of person.” He was concerned that Veronica, C.M., and Hannah were “in cahoots with one another’s stories.”

During that time Mother was looking for a higher level of care for Hannah, who had behavioral and mental health issues. Since living in Mother’s home, Hannah broke curfew, lied, stole, was defiant, and had poor relations with and aggression toward her siblings. Mother believed Hannah was angry about past childhood issues. When Hannah was disciplined she expressed dissatisfaction with the family as a whole. Mother stated that she had safeguards in place to protect her children, which included boys and girls not sharing bedrooms, a prohibition of playing in each other’s rooms, and Mother’s walking through the house a number of times each night.

Eddie was charged with continuous sexual abuse (Pen. Code, § 288.5, subd. (a)) and committing a lewd act on a child (Pen. Code section 288, subd. (a)). Eddie was released to the custody of his other adoptive parent, Wendy R. on May 21, 2011 and was

monitored with an ankle bracelet. On August 23, 2011, Eddie's Penal Code section 288.5, subdivision (a) charge was dismissed, but the court sustained the Penal Code section 288, subdivision (a) charge on a section 790 deferred entry of judgment, placed Eddie on informal probation, and prohibited Eddie from having contact with C.M.

Since May 12, 2011, Hannah received weekly counseling from therapist Karen Kerschmann, who reported that sexual acting out and physical and verbal aggression were not present. Poor hygiene and bed-wetting had significantly decreased. Mother had restricted Hannah's computer and phone privileges and restricted Hannah's contact with her siblings and adults or peers from her former community. Kerschmann reported that this isolation from family and friends impeded Hannah's developmental needs and social skills, and had resulted in increased depressive symptoms and negativity.

At the adjudication hearing, Mother testified that for Hannah she received wraparound services twice, counseling, and mental health services including individual psychiatric counseling. Hannah currently was receiving intensive treatment in San Diego. Hannah was removed in March 2011 because she was unhappy in Mother's home, and she needed higher levels of services that Mother was not able to provide. Mother testified that neither Hannah nor C.M. had previously told her of Eddie's sexual abuse of them. Two years earlier, Veronica told Mother that Eddie went into the girls' room and was "messing around, being a goof ball[,] antagonizing the girls." Mother reminded Eddie of the rule that boys and girls were not allowed in one another's rooms and told Eddie to "knock it off." At that time there was no report of any sexual touching by Eddie.

Mother did not believe Eddie molested the girls, but she said she knew something sexually inappropriate occurred between C.M. and Eddie in which each inappropriately touched the other. She believed Hannah was not telling the truth. She was not sure whether Veronica had told the truth.

Mother stated that Eddie lived with Wendy R., five to six miles away. Eddie had come back to Mother's home but not when C.M. was there, and did not live in Mother's home.

Veronica testified that she was recently removed from Mother's home because of the allegations about Eddie's touching. Veronica testified that Eddie went into her room late at night and was on the floor with a blanket over him touching Veronica's feet, which disgusted Veronica, who felt Eddie had no business in her room. Eddie also went inside a bathroom with a door to Veronica and Hannah's room and peeked into their room from an almost closed door. Veronica reported this to Mother, who talked to Eddie about it, but Eddie continued to peek into Veronica and Hannah's room. In another incident, Eddie was outside the window of a bathroom watching Veronica as she was getting dressed. Veronica yelled at Eddie and told Mother what Eddie was doing. Mother later said Eddie told her was picking up trash outside. On one occasion, Eddie was in Veronica's room on top of her bed touching her leg. Veronica did not report this to Mother because the previous time she reported him Mother did not stop Eddie.

The juvenile court amended and sustained counts under both section 300 petitions. The juvenile court sustained identical counts² as to Nathan, C.M., and Isaiah under subdivisions (b), (d), and (j). The juvenile court sustained the one count³ as to Hannah

² All three counts stated: "On or about 4/20/2011 the children Nathan [M.], [C.M.], and Isaiah [M.'s sibling Ezra [M.] committed lewd acts against the child [C.M.]. The child's mother, Candace [M.], knew or should have known of the sibling's lascivious acts and failed to protect the child. The sibling was convicted of committing a lewd act against a child under 14 years of age. Such lewd acts upon the child by the sibling and the mother's failure to protect the child endangers the child's physical health and safety and places the child and the child's siblings, Nathan and Isaiah, at risk of physical harm, danger, sexual abuse, and failure to protect."

³ All three counts stated: "On or about 3-5-2011 and on a prior occasion, the child, Hannah [M.'s] sibling, Ezra [M.], committed lewd acts against the child. The child's mother, Candace [M.], knew or reasonably should have known of the sibling's lewd acts against the child and failed to protect the child. Such abuse of the child by the sibling, and the mother's failure to protect the child, endangers the child's physical health and safety, and places the child at risk of physical harm, damage, danger, sexual abuse and failure to protect."

under subdivisions (b), (d), and (j) and sustained a second count⁴ pursuant to subdivisions (b) and (d).

For the dispositional hearing, the juvenile court received therapists' reports for Hannah and C.M. Hannah's therapist, Karen Kerschmann, stated that Hannah had a decrease in behavior issues of sexual acting out, physical and verbal aggression, and dishonesty. Kerschmann stated that returning Hannah to Mother's custody would not be beneficial to Hannah's mental health. Kerschmann stated that Mother's past reports of Hannah's behavior did not correspond to Hannah's current behavior. C.M.'s therapist, Ana Carillo, stated that C.M. had been in treatment since August 18, 2011, had participated consistently, and was cooperative in therapy sessions working and processing issues related to abuse. C.M.'s therapist also recommended family therapy with Mother in order to address trauma with Mother and improve communication.

On May 2, 2012, the juvenile court declared Nathan, C.M., Isaiah, and Hannah dependent children of the court under section 300, subdivisions (b), (d), and (j). The juvenile court ordered the children placed with Mother under DCFS supervision, and ordered Hannah voluntarily placed, with the DCFS to work with Mother to look for a placement for Hannah closer to her siblings. Mother was ordered to participate in conjoint counseling with Hannah and C.M. separately, and to participate in individual counseling to address case issues including sex abuse awareness.

Mother filed a timely notice of appeal.

⁴ Two counts pursuant to subdivisions (b) and (d) stated: "On or about 4-20-11 and on prior occasions, the child, Hannah [M.'s] sibling, Ezra [M.], committed lewd acts against the child, [C.M.]. The child's mother, Candace [M.], knew or reasonably should have known of the sibling Ezra's lewd acts against the sibling [C.M.] and failed to protect the sibling [C.M.]. The sibling Ezra was convicted of Lewd Acts Against a Child Under 14 Years. Such abuse of the sibling [C.M.] by the sibling Ezra, and the mother's failure to protect the sibling [C.M.], endangers the child's physical health and safety, and places the child at risk of physical harm, damage, danger, sexual abuse and failure to protect."

ISSUE

Mother claims on appeal that the juvenile court erroneously took jurisdiction under section 300, subdivisions (b), (d), and (j), as to Hannah, Nathan, C.M., and Isaiah in that at the time of the adjudication there was no current risk of harm.

DISCUSSION

1. *Standard of Review of Jurisdictional Findings at the Adjudication*

This court reviews the juvenile court's jurisdictional findings and orders according to the substantial evidence test. "Substantial evidence" means such relevant evidence as a reasonable mind would accept as adequate to support a finding, and is evidence that is reasonable in nature, credible, and of solid value. Under the substantial evidence test, conflicts are resolved in favor of the prevailing party and issues of fact and credibility are questions for the trier of fact. (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.) In juvenile court the social service agency has the burden of showing specifically how a child has been or will be harmed. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) On appeal, the appellant has the burden of showing that the findings or order are not supported by substantial evidence. (*In re R. V.* (2012) 208 Cal.App.4th 837, 843.)

2. *Substantial Evidence Supports Juvenile Court Jurisdiction over Hannah, C.M., and Isaiah Under Section 300, Subdivision (b), But Does Not Support Jurisdiction over Nathan*

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (b) if the child "has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child."

Mother argues that the petition alleges only past incidents of Eddie's lewd conduct and that Mother knew or should have known of his acts, which alone are not enough for jurisdiction under section 300, subdivision (b). Mother cites *In re Rocco M.* (1991) 1 Cal.App.4th 814: "While evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.] Thus the past

infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]” (*Id.* at p. 824.)

A showing that the child *has suffered* prior serious physical harm or abuse, however, is sufficient to satisfy the jurisdictional requirement of section 300, subdivision (b). That statute states that “The child *has suffered*, or there is a substantial risk that the child will suffer, serious physical harm or illness.” (Italics added.) The disjunctive “or” shows that dependency jurisdiction under subdivision (b) can be satisfied in either of two ways, the first of which is a showing of prior abuse and harm. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1434-1435.) *Rocco M.* was based on a prior version of the statute which indicated an intent that the unfitness exist at the time of the hearing. (*Id.* at p. 1436.) As noted in *In re David H.* (2008) 165 Cal.App.4th 1626, “[t]he Legislature apparently concluded that a showing of *past* serious physical harm was sufficient to establish a need for court intervention even without a separate showing of a substantial risk of future serious physical harm.” (*Id.* at p. 1642, fn. 14.)

Substantial evidence supported the finding that Hannah and C.M. had suffered serious physical harm as a result of Mother’s failure or inability to adequately supervise or protect them. This is sufficient to support the initial exercise of jurisdiction over Hannah and C.M. under section 300, subdivision (b) and the juvenile court properly sustained the subdivision (b) jurisdictional allegations as to Hannah and C.M.

With regard to Isaiah, although Eddie was placed outside the home, that placement was voluntary and Mother admitted that Eddie had returned to her home to visit. Isaiah was also co-parented by and spent time in the home of Wendy R., in whose home Eddie lived. Mother appeared to be predisposed to disbelieve that Eddie could commit any wrongdoing against the other children, and had failed to prevent his physical harm and sexual abuse of Hannah and C.M. Isaiah was younger than C.M., and although there had been no prior physical harm to him, Mother’s lack of supervision of Eddie, and failure to protect C.M. and Hannah, also placed Isaiah at substantial risk of physical harm.

Substantial evidence supports the jurisdictional findings as to Isaiah pursuant to section 300, subdivision (b).

With regard to Nathan, he had suffered no previous serious physical harm as a result of Mother's failure or inability to adequately supervise or protect him. Nathan was Eddie's age and had a good relationship with him. Substantial evidence does not support the initial exercise of jurisdiction over Nathan under section 300, subdivision (b) and the sustaining of jurisdictional allegations pursuant to section 300, subdivision (b) as to Nathan is reversed.

3. *Substantial Evidence Supports Juvenile Court Jurisdiction over Hannah, C.M., and Isaiah Under Section 300, Subdivision (d), But Does Not Support Jurisdiction over Nathan*

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (d) if the child "has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent . . . or a member of his or her household, or the parent . . . has failed to adequately protect the child from sexual abuse when the parent . . . knew or reasonably should have known that the child was in danger of sexual abuse."

The analysis of subdivision (d) is similar to that of subdivision (b). Subdivision (d) authorizes the juvenile court to take jurisdiction if there has been past sexual abuse of a child, but does not also require that there is a substantial risk that the child will be sexually abused in the future. There was substantial evidence of Eddie's previous sexual abuse of Hannah, and the charge of committing a lewd act upon a child, C.M., was sustained. Substantial evidence supported the finding that Hannah and C.M. had been sexually abused by a member of their household, which was alone sufficient to support the initial exercise of jurisdiction over Hannah and C.M. under section 300, subdivision (d). (*In re Maria R.* (2010) 185 Cal.App.4th 48, 60; *In re Carlos T.* (2009) 174 Cal.App.4th 795, 804.)

There is no evidence of Eddie's previous sexual abuse of Isaiah, but section 300, subdivision (d) has an alternative basis for jurisdiction, which is that "there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by . . . a member of his . . . household." An older male sibling who has committed multiple incidents of sexual abuse of two younger female siblings can reasonably be said to be sufficiently sexually aberrant that both male and female siblings of the victims are at substantial risk of sexual abuse within the meaning of section 300, subdivision (d). (*In re Karen R.* (2001) 95 Cal.App.4th 84, 90-91.) A brother can also be harmed by the fact of sexual abuse within the family, by the denial of the perpetrator, by a parent's denial of or acquiescence in the sexual abuse. (*In re P.A.* (2006) 144 Cal.App.4th 1339, 1346.) Where two siblings have been sexually abused multiple times, any younger sibling approaching the age at which the siblings were abused may be found to be at risk of sexual abuse. (*Id.* at p. 1347.) We affirm the jurisdictional findings pursuant to section 300, subdivision (d) as to Isaiah.

Nathan was not previously sexually abused, and there appears to be no substantial risk he will be sexually abused by a member of his household. Nathan is Eddie's age and has a good relationship with him. Substantial evidence does not support the initial exercise of jurisdiction over Nathan under section 300, subdivision (b) and sustaining of jurisdictional allegations pursuant to section 300, subdivision (b) as to Nathan is reversed.

4. *Substantial Evidence Supports Jurisdictional Findings over Hannah, C.M., Isaiah, and Nathan Under Section 300, Subdivision (j)*

A child comes within the jurisdiction of the juvenile court under section 300, subdivision (j) if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent . . . , and any other factors the court considers probative in determining whether there is a substantial risk to the child."

There was substantial evidence that Hannah and C.M. had been abused or neglected, and thus all four children—C.M., Hannah, Isaiah, and Nathan had siblings who had been abused or neglected as defined in subdivision (b) and (d). Subdivision (j) also requires that there be a substantial risk that the child will be abused or neglected as defined in subdivisions (a), (b), (d), (e), or (i). Although Eddie was living with co-parent Wendy R., Isaiah has also spent some time in Wendy R.'s home. Eddie's placement with Wendy R. was voluntary and Mother admitted that Eddie had returned to her home to visit. Mother had also failed to protect Hannah and C.M., despite having reports that Eddie had sexually abused them and had made sexual advances to sibling Veronica by peeking through doors and windows as she dressed and by coming into her room at night and touching her legs. Mother ignored or minimized these reports or excused Eddie's behavior. Mother similarly rejected Hannah's reports of Eddie's sexual abuse, accused Hannah of lying, and called her belligerent and a thief who had poor hygiene. The circumstances surrounding the abuse and neglect of Hannah and C.M., the nature of that abuse and neglect, Mother's mental condition, and the young age of Isaiah are probative factors in determining that there is a substantial risk of neglect or abuse of Hannah, C.M., Isaiah, and Nathan. We affirm the jurisdictional findings under section 300, subdivision (j) as to Hannah, C.M., Isaiah, and Nathan.

DISPOSITION

The jurisdictional findings pursuant to section 300, subdivisions (b) and (d) are affirmed as to C.M., Hannah, and Isaiah, but reversed as to Nathan; jurisdictional findings pursuant to section 300, subdivision (j) are affirmed as to C.M., Hannah, Nathan, and Isaiah.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.